

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

Writ Petition No.8212 of 2004

Smt.Fatima Froes Sadavarte  
alias Fatima Sukurina Froes ..Petitioner

vs.

1. State of Maharashtra & Ors. ..Respondents

Shri R.K.Mendadkar for petitioner  
Shri R.D.Rane, Addl.G.P. for respondent no.1  
Shri S.S.Pakale for respondent nos. 2 and 3

**CORAM: A.P.SHAH AND  
S.C.DHARMADHIKARI JJ  
23rd NOVEMBER, 2004**

**P.C.**

1. Rule. Respondents waive service.

2. By consent, petition is taken up for final hearing forthwith.

3. The petitioner is a Christian. On 27th February, 1989 she married to one Kavishwar Purushottam Sadavarte who belongs to Halba Tribe which is recognised as Scheduled Tribe. The petitioner thereafter granted couple certificate by the Competent Authority as per the policy of the State Government as reflected in Govt.Resolutions dated 12th August, 1958, 10th October, 1959, 16th

May, 1966 and 9th August, 1971 certifying that the couple as well as their progeny is liable for concessions admissible for Scheduled Tribe. On the basis of this couple certificate, the petitioner got appointment in respondent no.2 on 25th May 1997. She was made permanent on 9th August, 2000. After nearly 7 years respondent no.2 issued a memo calling upon the petitioner to submit the documents for verification of her caste certificate. The petitioner filed a detailed representation, inter alia, contending that she was never granted any caste certificate as belonging to Scheduled Tribe but she was granted couple certificate by the Competent Authority. She, therefore, requested the respondent no.3 not to insist on production of caste validity certificate. However, the respondent no.3 issued order dated 29th April, 2004 calling upon the petitioner to submit the caste validity certificate within one month failing which the services of the petitioner will be liable to be terminated.

4. Shri Mendadkar, learned Counsel, drew our attention to the decision of the Division Bench of this Court in Mrs. Vandana Vishwanath Londe Vs. State of Maharashtra (Writ Petition No.3583 of 2003

decided on 4th July, 2003) In that case in similar circumstances, the Court protected the services of the employees. Relevant observations of the Bench are reproduced below.

"4. In view of the judgment of the supreme Court in Valsamma Paul's case (supra), the petitioner is not entitled to the benefits which are conferred by the Presidential Order on the Thakar community which is listed as a Scheduled Tribe. The petitioner does not become a member of that Scheduled Tribe merely by reason of her marriage with a person who belongs to it. There is no dispute about the position that the parents of the petitioner did not belong to any reserved community and that the petitioner by birth, therefore, does not belong to any community for which reservations have been provided.

"5. However, the limited question which arises before the court is as to whether it would be appropriate and proper for the Fourth respondent to terminate the services of the petitioner. The petitioner joined

service as far back as in March, 1995 and had put in over seven years of service by the time the order of termination was passed. This is not a case where there has been any suppression of fact on the part of the petitioner. Nor is it a case where the petitioner produced any bogus or fabricated documents. At the time when the petitioner joined service, the stated policy of the Government of Maharashtra as was to encourage such intercaste marriages by announcing that the benefit of reservation would be available to those couples and their progeny where one of them belongs to a reserved community. The legal basis of the policy of the Government of Maharashtra was undoubtedly not valid and in any event, in view of the judgment of the supreme Court in Valsamma Paul's case, the petitioner cannot in law assert that she belongs to a Scheduled Tribe. However, having regard to the period of service which had been put in by the petitioner of over seven years with the fourth Respondent and the other circumstances narrated earlier, we are of the view that the ends of justice would be

served if the services of the petitioner are protected by an order of reinstatement subject to the condition that the petitioner undertakes not to claim to belong to any reserved category at any point of time. The undertaking to that effect tendered on behalf of the petitioner through learned Counsel is accordingly accepted. This petition is accordingly disposed of with the direction that the Fourth Respondent shall reinstate the petitioner in service in the post in which she was serving. Though the petitioner would be entitled to continuity of service, there will be no order as regards the payment of backwages. The service record of the petitioner shall also be corrected by the Fourth Respondent by incorporating a suitable entry therein to the effect that the petitioner does not belong to any reserved category."

5. In the light of the decision of the Division Bench, we are inclined to allow the present petition and the petition is accordingly allowed. The impugned letter dated 20th September, 2004 (Exh.A to the petition) is quashed and set aside.

The respondents are directed not to insist for production of caste validity certificate. However, we make it clear that the petitioner will not be entitled to claim any benefits as a scheduled tribe candidate in future. The service record of the petitioner shall be corrected by incorporating suitable entry to the effect that the petitioner does not belong to any reserved category.

6. Writ Petition is accordingly disposed of in terms of the above order. No order as to costs.